

MISSISSIPPI DIVISION OF MEDICAID

Eligibility Policy and Procedures Manual

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301.01.03 **FEE SIMPLE OWNERSHIP**

Type of Ownership	What It Means
Fee Simple Ownership	<ul style="list-style-type: none"> • Relates only to real property • Means absolute and unqualified legal title to real property • Fee simple ownership is completely free of conditions imposed by others • The owner has the unconditional power of disposition during his lifetime. • Upon the owner's death, property held in fee simple can always pass to the owner's heirs. • May exist with respect to property owned jointly or solely.

301.01.04 **LESS THAN FEE SIMPLE OWNERSHIP**

Type of Ownership	What It Means
Equitable Ownership	<ul style="list-style-type: none"> • Exists without legal title to property. • Legal title may belong to another or to no one. • Examples of equitable ownership include ownership in unprobated estates or trust property.
<ul style="list-style-type: none"> • Unprobated Estate 	<p>An individual may have an equitable ownership in an unprobated estate if he is an heir or relative of the deceased, receives income from the property or acquires rights through intestacy laws.</p> <p>Under liberalized resource policy, estates in process of probate are excluded. Under SSI resource policy an unprobated estate becomes a resource the month following the month it meets the definition of income.</p>

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Less than Fee Simple Ownership (Continued)

Type of Ownership	What It Means
<ul style="list-style-type: none">• Trust Property	A trust is a right of property, established by a trustor or grantor. A Trustee holds legal title and manages the property for the benefit of a beneficiary. The beneficiary does not have legal title, but does have an equitable ownership interest. Clearance procedures must be followed in determining how the trust affects eligibility

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Type of Ownership	What It Means
<ul style="list-style-type: none"> Life Estate Interest 	<ul style="list-style-type: none"> Individual has certain property rights during his life or someone else's life. May be conditional See instructions below for handling a conditional life estate. Legal document is required (such as will or deed). Unless the legal document restricts rights, the life estate owner has the right to possess, use, and obtain profits from the property (such as rents). Life estate interest can be sold. Life estates do not descend to heirs. <p>Example: Mr. Heath, now deceased, willed his daughter a life estate in property which he owned fee simple. The will also designated Mr. Heath's two sons as remaindermen. The daughter has the right to live on the property until her death, at which time, under the terms of her father's will, the property will pass to her brothers as joint tenants.</p> <ul style="list-style-type: none"> If there are joint owners of a life estate, the CMV is divided by the number of owners to determine an individual's share. When one joint owner of the life estate dies, the surviving owner(s) increases their interest. If a couple has a life estate and one spouse dies, the remaining spouse is the sole owner of the life estate. When the remaining spouse dies, the person holding the remainder interest then has the right to possess and use the property. It is possible to have a life estate interest in a structure (house) and not the surrounding land. The CMV of the structure or whatever the tenant has the right to use as established by the deed or a will would be determined.

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Less than Fee Simple Ownership (Continued)

Procedure

Treatment of Life Estates under Liberalized Resource Policy

Under liberalized policy a life estate is an excluded resource. The exclusion is not limited to property located in Mississippi. In addition, if the individual has a life estate interest in more than one piece of property, all are excluded. However, there are some exceptions to excluding a life estate:

- If a life estate is transferred or sold, eligibility for vendor payment or HCBS waiver services may be affected.
 - A transfer of a life estate is sanctionable.

Calculating the Value of a Life Estate on a Transfer

When the value of a life estate interest needs to be determined for a potential transfer, follow the procedures below, using the age of the individual as of their last birthday at the time of the transfer.

- Verify the Current Market Value (CMV) of the property.
- Use the Unisex Life Estate and Remainder Interest Table for the following steps:
 1. Find the age of life estate owner as of their last birthday at the time of the transfer.
 2. Locate the factor in the Life Estate column that corresponds to the age.
 3. Multiply the CMV of the property by the life estate factor to obtain the value of the life estate.

(CMV of the property X Life Estate Factor = CMV of the life estate)

Transfer Example: Jane Ayers took a life estate in her home in 1988. Now at age 97, she is applying for nursing home care. It is discovered she transferred her life estate interest to her son two years ago. Her age as of her last birthday at the time of the transfer was 95 and at that time the property had a CMV of \$250,000. The uncompensated value is determined as follows: \$250,000 (CMV) x .22887 (Life Estate Factor for Age 95) = \$57,217.50 (Uncompensated Value)

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Procedure

Treatment of Life Estates under Liberalized Resource Policy

Conditional Life Estate

A conditional clause establishes limitations on the life estate. For example, the grantor may reserve a life estate for as long as the grantor lives and maintains a home on the property.

- For deeds dated on or after February 8, 2006, consider the entire property transferred if the deed contains a conditional life estate clause. The transfer date will be the date of the deed.

The life estate can be corrected if a revised deed is prepared removing the conditional clause with the grantor reserving a life estate without limitations. However, the transfer of the remainder interest, if it occurred within the 5-year look back period, must be considered if the grantor enters long term care. Therefore, removing the conditional life estate clause may only shorten the transfer period.

Life Estate Provisions Under the DRA

Under the DRA the purchase of a life estate in another individual's home on or after February 8, 2006, is a transfer of assets unless the purchaser resides in the home for at least 12 consecutive months after the date of purchase.

- Do not deduct vacations, overnight visits, and hospital stays from the one-year period as long as the home continued to be the individual's legal residence.
- Count the entire purchase price as an uncompensated transfer if the purchaser resides in the home for any period less than one year.

Also the DRA provides that even if the life estate purchaser lives in the home for 12 consecutive months, the purchaser must not pay more than CMV for the life estate. Any amount paid above CMV is considered a transfer and should be penalized according to the transfer policy. Verify the purchase price and calculate the CMV of the life estate. Any amount paid over the CMV of the life estate is considered a transfer.

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Procedure

Treatment of Life Estates Under SSI Resource Policy

Under strict SSI policy, the value of a life estate is a countable resource unless an exclusion exists.

- Verify the Current Market Value (CMV) of the property.
- Use the Unisex Life Estate and Remainder Interest Table for the following steps:
 1. Find the age of life estate owner as of their last birthday.
 2. Locate the factor in the Life Estate column that corresponds to the age.
 3. Multiply the CMV of the property by the life estate factor to obtain the value of the life estate.

(CMV of the property X Life Estate Factor = CMV of the life estate)

NOTE: If there is joint ownership of a life estate, first determine the CMV of the entire property. Divide the CMV by the number of joint owners to determine the individual's share and then calculate the individual's life estate value as described above.

Example: 75 year-old Harry Thomas has a life estate in non-homestead property with a current market value of \$80,000. An exclusion for the property cannot be developed. Using the table, his life estate interest is valued as follows:

\$80,000 (CMV) x .52149 (factor for age 75) = \$41,719.20 (value of the life estate)

Example: 75 year- old Max Berry is living with his daughter due to illness, but states he intends to return home when health permits. Ten years ago, he transferred his home to his children retaining a life estate interest. An exclusion can be developed for the home property since his desire is to be able to return home.

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Type of Ownership	What It Means
<ul style="list-style-type: none">• Remainder Interest	<ul style="list-style-type: none">• The remainderman inherits property upon the death of the life estate holder.• The remainderman has no right to physical possession or use of the property until the life estate terminates.• The remainderman interest can be sold before the termination of the life estate unless the document establishing it restricts this right.<ul style="list-style-type: none">○ If the remainder interest is sold, the market value of it is likely to be reduced since such a sale is subject to the life estate interest.

Procedure
<p><u>Treatment of Remainder Interests Under Liberalized Resource Policy</u></p> <p>When the life estate holder dies, the remainder attains ownership of the resource, which must then be evaluated under the appropriate resource policy.</p> <ul style="list-style-type: none">• Under liberalized policy, the remainder interest is excluded.• However, in instances where a remainder interest is sold or transferred, eligibility for vendor payment or HCBS waiver services may be affected. The Unisex Life Estate and Remainder Interest Table is used to determine the value of the remainder interest. <p>NOTE: When determining the amount of a transfer under liberalized policy, equity in the property must also be considered. If there is a loan against the property that is assumed by the remainderman as part of the agreement, the amount of the loan is compensation received by the life estate holder and would be deducted in determining the uncompensated value of the remainder interest. If the life estate owner retains the loan obligation, the full value of the remainder interest is the amount transferred.</p>

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Procedure

Treatment of Remainder Interest Under Liberalized Resource Policy

Calculating Remainder Interest on a Transfer

Use the procedures below to determine the value of the remainder interest on a possible transfer. Use the age of the life estate owner as of their birthday at the time of the transfer date.

1. Find the age of the life estate owner as of their last birthday at the time of the transfer.
2. Locate the factor in the Remainder column that corresponds to the life estate owner's age in the Unisex Life Estate and Remainder Interest Table.
3. Multiply the CMV of the property by the remainder factor to obtain the value of the remainder interest.

CMV of the property x Remainder Factor = CMV of the Remainder Interest

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Procedure

Treatment of Remainder Interest under SSI Resource Policy

The value of a remainder interest is countable unless a specific exclusion exists. The value of a remainder interest is determined in the same manner as a life estate.

Determine the CMV of the property and use the Unisex Life Estate and Remainder Interest Table as follows:

1. Find the age of the life estate owner as of their last birthday,
2. Locate the factor in the Remainder column that corresponds to the age.
3. Multiply the CMV of the property by the remainder factor to obtain the value of the remainder interest.

(CMV of the property x Remainder Factor = CMV of the Remainder Interest)

Example (SSI Resource Policy):

Applicant, Paul Jones, holds a remainder interest in property with a current market value of \$80,000. The life estate owner is his father who was 75-years old as of his last birthday. The value of Paul Jones' remainder interest is calculated from the table as follows:

(CMV) \$80,000 x .47851 (Remainder factor for age 75) = \$38,280.80 (CMV of Remainder).

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Less than Fee Simple Ownership (Continued)

Type of Ownership	What It Means
Ownership by Will or Descent	<p>An individual may have ownership interest in an unprobated estate acquired through a will or through the death of a relative who died intestate (without a will). The heir(s) may be the sole owner or joint or common owners, etc.</p>
<ul style="list-style-type: none">• Heirs by Will	<ul style="list-style-type: none">• Have ownership or control of the property or their joint or common share.• If the will has not been filed with the proper court and has not been probated, there is question of whether the will is legally binding. Legally, wills are supposed to be filed for probate; however, there is no time limit. Absent evidence to the contrary, assume the client owns the property in proportion, whereby he has the right to the will's directives.
<ul style="list-style-type: none">• Heirs by Descent	<ul style="list-style-type: none">• Acquire ownership interest to property by virtue of the heir's relationship to the deceased.• Intestate property of a deceased person with a spouse and children is shared equally by the surviving spouse and children. Grandchildren become involved in ownership interest only when their parent, who was a child of the original owner, is deceased. The grandchildren's interest is only in the share that their deceased parent held in interest.

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Type of Ownership	What It Means
<ul style="list-style-type: none">Heirs by Descent	<ul style="list-style-type: none">Intestate property of an individual with no spouse or children at the time of death descends equally to his parents and brothers and sisters. If the deceased's parents are also deceased, the property descends to his brothers and sisters.Nieces and nephews become involved only if their parent who was a brother or sister to the deceased is also deceased. Their ownership interest is only in the share that their deceased parent held an interest in. <p>Absent evidence to the contrary assume an heir inherited property based on their laws of descent where the property is located.</p>